

**LEMON GROVE [CITY COUNCIL]
AGENDA ITEM SUMMARY**

Item No. 4
Mtg. Date May 17, 2016
Dept. Development Services

Item Title: [Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way]

Staff Contact: [David De Vries, Development Services Director]

Recommendation:

[Adopt a resolution amending the Option Agreement providing a six month time extension and requiring an affordable housing regulatory agreement.]

Item Summary:

In September 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way, Lemon Grove Housing Authority owned land. The Purchase Option Agreement required SDCLT to complete certain milestones by specified dates. The fourth milestone—securing building and site improvement permits and securing, as to form, the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be completed by May 19, 2016. These milestones ensure that SDCLT has progressed towards the purchase of 8084 Lemon Grove Way. The applicant is working with city staff towards completing this milestone, however, will be unable to meet the specified deadline. The staff report presents an overview of progress towards this milestone. Staff recommends that the City Council adopt a resolution amending the Option Agreement providing a six month time extension and requiring an affordable housing regulatory agreement.

Fiscal Impact:

[None]

Environmental Review:

☒ Not subject to review

☐ Negative Declaration

☐ Categorical Exemption, Section []

☐ Mitigated Negative Declaration

Public Information:

☒ None

☐ Newsletter article

☐ Notice to property owners within 300 ft.

☐ Notice published in local newspaper

☐ Neighborhood meeting

Attachments:

- A. Staff Report
- B. [Resolution Amending the Option Agreement]
- C. Time Extension Request from SDCLT

Attachment A

LEMON GROVE [CITY COUNCIL] STAFF REPORT

Item No. 4

Mtg. Date [May 17, 2016]

Item Title: [Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way]

Staff Contact: [David De Vries, Development Services Director]

Discussion:

[On September 22, 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is owned by the Lemon Grove Housing Authority (City Council Resolution No. 2014-3284 dated September 16, 2014). A nine unit housing development is currently entitled on the subject property based on approvals in 2007 and amendments approved on March 1, 2016. The Purchase Option Agreement allows SDCLT to purchase the property for one dollar in exchange for constructing the units and restricting them to moderate income households as a part of their 99-year ground lease mechanism. As a part, SDCLT is required to complete certain milestones by specified dates. These milestones ensure that SDCLT has done their due diligence to determine whether the project is feasible.

The first milestone—submission of a business plan—was to be completed in December 2014. The business plan was submitted on December 1, 2014 and the City Council reviewed the business plan and provided feedback to SDCLT on January 6, 2015.

The second milestone—securing entitlements and construction financing—was to be completed by September 2, 2015 and October 19, 2015 respectively. Minimal revisions to the approved Tentative Map (TM0052) and Planned Development Permit (PDP06-09) are proposed and amendments to the floor and elevation plans were approved by the City Council on March 1, 2016. Entitlements are in place until February 20, 2017. On September 4, 2015, SDCLT submitted a Letter of Intent (LOI) from Torrey Pines Bank (**Attachment C**) that has been signed with the appropriate deposit providing conditional approval for construction financing from Torrey Pines Bank. These actions satisfied the second milestone.

The third milestone—submit building and site improvement applications—was to be completed by April 4, 2016. This milestone requires submittal of packages for a grading permit, building permit, landscape permit, and a final map. Appropriate plans and reports include building and site construction plans, grading plans, a landscape documentation package, an acoustical analysis, a Storm Water Quality Management Plan and a hydrology report, draft Conditions, Covenants, and Restrictions (CC&Rs), and potentially other necessary reports, studies, and plans in accordance with City Council Resolutions 2694 and 2695 which approved TM0052 and PDP06-09 respectively. A “Hold Harmless” agreement was required for each submittal. In February of 2016, SDCLT submitted the necessary permit applications satisfying the third milestone.

The fourth milestone—securing building and site improvement permits and securing approval as to form of the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—is to be completed by May 19, 2016. This requires that all permits applied for in the

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third milestone are secured (permits issued and improvements secured either through a bond or cash deposit). At this time, SDCLT is responding to corrections related to the building and engineering permits and the final map application submittal and has encountered unforeseen issues with Helix Water District (Helix) requiring standard asphalt paving above their water lines where pervious pavement was proposed. The pervious pavement is a part of their hydrology and water quality documentation and is needed for the project to comply with City requirements. SDCLT intends to apply for a waiver of this Helix requirement; however, the waiver requires approval from the Helix Board of Directors. If the waiver cannot be obtained, then amendments to the hydrology and water quality documents will be required. Regardless of the results, staff estimates all of the needed engineering and building permits in the fourth milestone should be able to be issued and secured within three to six months. Staff recommends that a six month extension to the Option Agreement be provided in order to allow SDCLT sufficient time to secure the permits. SDCLT has already submitted a draft ground lease for City review and the City is working with SDCLT on amendments.

In order to ensure the continued affordability of the units, staff recommends that the amendment to the option agreement also include a requirement for an Affordable Housing Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property, which is the covenant the City is requiring on affordable housing units ensuring that affordability restrictions are retained upon transfer of property and requiring annual reporting to the City to monitor the continued affordability of the units. A draft of the affordability agreements and the 99-year ground lease will be mutually agreed upon by City staff and SDCLT before it is submitted to City Council for consideration and approval at a future meeting.

Should the Council decided to take no action providing for no amendment to the Option Agreement, then the Option Agreement will terminate on May 19, 2016 since the fourth milestone was not adhered to and the developer would need to renegotiate a new option agreement with the City should they continue to desire to pursue the project. The City Council may pursue other opportunities for the property if this option agreement terminates.]

Conclusion:

Staff recommends that the City Council adopt a resolution amending the Option Agreement providing a six month time extension and requiring an affordable housing regulatory agreement.

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RESOLUTION NO. [2016-_____]

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA [APPROVING AN AMENDMENT TO AN OPTION AGREEMENT WITH THE SAN DIEGO COMMUNITY LAND TRUST FOR THE PARCEL IDENTIFIED AS 8084 LEMON GROVE WAY (APN 475-450-19-00)]

WHEREAS, on June 20, 2006 and June 19, 2007, the former Lemon Grove Community Development Agency and a developer entered into loan agreements for the development of nine townhome units at 8084 Lemon Grove Way; and

WHEREAS, said developer defaulted on the loan agreements, resulting in the parcel identified as 8084 Lemon Grove Way becoming property of the City of Lemon Grove; and

WHEREAS, in 2014, the San Diego Community Land Trust provided a formal offer to purchase 8084 Lemon Grove Way from the City; and

WHEREAS, the San Diego Community Land Trust's offer includes a commitment to develop and construct a minimum of nine affordable housing units to be ground leased for a 99-year period to households earning from 80 percent to 120 percent of the San Diego Area Median Income at the time of sale or resale; and

WHEREAS, the provision of these affordable units helps meet the City's moderate housing targets established by the Regional Housing Needs Assessment (January 1, 2013 – December 31, 2020); and

WHEREAS, on June 17, 2014, the City Council directed staff to negotiate purchase agreements with the San Diego Community Land Trust, based on its offer; and

WHEREAS, on September 16, 2014, the City Council approved an Option Agreement and a Real Estate Purchase and Sale Agreement between the City of Lemon Grove and the San Diego Community Land Trust; and

WHEREAS, the City has negotiated an amendment to the Option Agreement with the San Diego Community Land Trust extending the expiration date of milestone 7.4 to October 19, 2016 and the option term to March 22, 2017 (both six month extensions) and including an Optionee requirement to execute an Affordable Housing Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property; and

WHEREAS, the City Council has reviewed said amendment; and

WHEREAS, the City Council finds it in the best interest of the City of Lemon Grove to approve said amendment; and]

[NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves an Amendment to the Option Agreement (Exhibit 1) between the City of Lemon Grove and the San Diego Community Land Trust and authorizes the City Manager to execute said Amendment and related documents subject to minor modifications. The draft 99-year ground lease and regulatory agreement will be provided to City Council for consideration and approval.]

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EXHIBIT 1

FIRST AMENDMENT TO OPTION AGREEMENT

This First Amendment to Option Agreement ("**First Amendment**") is entered into as of May ___, 2016, by and between and between THE CITY OF LEMON GROVE a public body ("**Optionor**") and THE SAN DIEGO COMMUNITY LAND TRUST a California 501(c)(3) non-profit organization ("**Optionee**"),

RECITALS:

A. Optionor and Optionee entered into that certain Option Agreement dated September 22, 2014 relating the Property commonly known as 8084 Lemon Gove Way, Lemon Grove, CA (APN475-450-19-00) (the "**Option Agreement**").

B. Optionor and Optionee desire to further amend the Option Agreement set forth herein. All initially capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Option Agreement.

AGREEMENT:

1. Extension of Option Term. Paragraph 4 of the Option Agreement is deleted in its entirety and replaced as follows:

"4. Option Term. The Option may be exercised upon the Effective Date and no later than March 22, 2017 (the "**Option Term**"), unless terminated earlier under the terms of Section 6. If the Option is not exercised in accordance with the provisions and conditions hereof during the Option Term, then the Option shall expire and the parties shall have no further obligations under this Agreement with the exception of any surviving indemnification obligations as provided in this Agreement."

2. Extension of deadline for Permits and Optionor's Approval. Subparagraph 7.4 of the Option Agreement is deleted in its entirety and replaced as follows:

"7.4 No later than October 19, 2016: (a) Optionee shall have (i) secured Building and Site Improvement Permits (including building, street improvement, and grading plans shall be issued and the final map shall be recorded), (ii) secured Optionor's approval as to form of the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests; and (b) Optionor shall have prepared for recording on the Closing Date as defined in the Purchase agreement in the records of San Diego County, an Affordable Housing Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property (together "Regulatory Agreement"). Optionor and Optionee agree that recordation of said Regulatory Agreement shall be deemed a condition of City's (Optionor's) obligation to transfer the Property to the Developer ("Optionee") under the Purchase Agreement and the Purchase Agreement shall be amended to include said condition prior to execution.

3. Counterparts. This First Amendment may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event

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this First Amendment is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one First Amendment.

4. Effect of First Amendment. Except as amended hereby, the Option Agreement remains in full force and effect.

IN WITNESS WHEREOF, Optionor and Optionee have executed this First Amendment as of the date set forth above.

OPTIONOR:

THE CITY OF LEMON GROVE.,

By: _____

Name: _____

Its: _____

Approved as to legal form:

By _____
James P. Lough, City Attorney

OPTIONEE:

THE SAN DIEGO COMMUNITY LAND TRUST,

By: _____

Name: _____

Its: _____



Board of Directors May 5, 2016

Richard Lawrence

Chair

Charles Davis

President

Sochiata Vutthy

Secretary

Tom Scott

CFO

Damon Braden

Thomas Cartwright

Elaine Kennedy

Lee Van Ham

David B. De Vries, AICP

Development Services Director

City of Lemon Grove

Development Services Department

3232 Main St.

Lemon Grove, CA 91945

RE: Request for Option Extension – 8084 Lemon Grove Way

Dear David:

Advisory Committee

Malin Burnham, Chair

Charles Black

Gina Champion-Cain

Wendell French

Robert Ito

Vince Kasperick

Tom Lemmon

Nancy Lytle

Arnulfo Manriquez

David Mulvaney

Sue Reynolds

Susan Riggs

Debbie Ruane

Barry Schultz

Brian Trotier

David Weiland

Clause 7.4 of the September 22, 2014 Option Agreement between the City of Lemon Grove and the San Diego Community Land Trust (SDCLT) requires that no later than May 19, 2016 SDCLT has secured building permits and secured the City's approval of the form of ground lease. SDCLT submitted plans for review prior to the April 4, 2016 option milestone set forth in clause 7.3 however, requests were made by the Helix Water District that would have significant adverse impacts on the project. SDCLT has been working with Helix to find an acceptable resolution to these requests but this has delayed our ability to resubmit our plans for final review.


Helix staff appears supportive of the approaches to resolve these issues as discussed at the recent meeting which you attended. These solutions will, however, require Helix Board approval. We have submitted our formal request to Helix and hope to have our request agendaized as soon as possible. We are also working with you to obtain approval of the form of ground lease to be used that will adequately protect the affordability restrictions.

We therefore request an extension to the Option Agreement to allow us to conclude our discussions with Helix that will enable us to resubmit our plans and to obtain acceptance of the form of ground lease.

Executive Director

Jean Diaz

All the best,


Executive Director